

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
NEIL WOODS,

Plaintiff.

-against-

KARL GOODYEAR, INNOVATIONS OF  
ROCKLAND, INC., GLORIA HANA, LEROY  
ANDREW, SR. and ANGELA BAKER,

Defendants.  
-----X

Index # 03 CV 011

**MEMORANDUM OF LAW  
IN SUPPORT OF MOTION  
FOR SUMMARY JUDGMENT**

**MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT PURSUANT TO RULE 56**

Dated: New York, New York ;  
March 20, 2006

LEAHEY & JOHNSON, P.C.

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**STATEMENT OF FACTS**

This is an action to recover for personal injuries allegedly sustained by Plaintiff as a result of a four-car accident. This Court's jurisdiction is based on diversity of citizenship and, accordingly, New York State substantive law applies.

:

1. Plaintiff is a New York resident who was involved in a motor vehicle accident on March 3, 200, at approximately 8:08 a.m. on Rout 9, in the Village of Irvington, County of Westchester and State of New York.

2. Defendant KARL GOODYEAR who was operating a vehicle owned by INNOVATIONS OF ROCKLAND, INC. was the first car involved in the accident. Defendant GLORIA HANNA who was operating Defendant LEORY ANDREW, SR.'s vehicle at the time of the accident was the **second car** involved in the accident. The Plaintiff NEIL WOODS was the driver of the **third vehicle** involved in the motor vehicle accident and was directly behind the

defendant GLORIA HANNA'S vehicle. Defendant ANGELA BAKER was the fourth car involved in the accident was directly behind the plaintiff at the time of the accident.

I.

**DEFENDANT GLORIA HANNA IS ENTITLED TO  
SUMMARY JUDGMENT AS HER VEHICLE WAS STOPPED  
AT THE TIME OF THE ACCIDENT WHEN IT WAS REAR-ENDED  
BY THE PLAINTIFF'S VEHICLE**

3. Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is appropriate where the "pleadings, depositions, answer to interrogatories, and admissions on file, together with affidavits, if any, show that there is not genuine issue as to any material fact". See Federal Rules of Civil Procedure 56(c). In the case at bar, Defendant GLORIA HANNA is entitled to summary judgment as the depositions of the plaintiff NEIL WOODS, defendants : GLORIA HANNA and ANGELA BAKER establishes that there is no genuine issue of fact as to the occurred of the accident. All parties concur that Plaintiff NEILD WOODS struck Defendant GLORIA HANNA in the rear while her vehicle was stopped.

4. In this current action Summary Judgment is appropriate as New York case law has clearly established that a rear-end collision with a stopped automobile establishes a prima facie case of negligence against the operator of the moving vehicle. Ortiz v. Rosner, 1992 U.S. Dist. LEXIS 2869; Katona v. Federal Express Corp., 1998 U.S. Dist. LEXIS 3469; Leber v. Hill 1987 U.S. Dist. LEXIS 9746; Mascitti v. Greene, 250 A.D.2d 281, 673 N.Y.S.2d 206, (2<sup>nd</sup> Dept. 1998); Leal v. Wolff, 224 A.D.2d 392, 638 N.Y.S.2d 110, (2<sup>nd</sup> Dept. 1996).

5. Furthermore, the New York Vehicle and Traffic Law ("VTL") has codified the responsibility of motor vehicle operators in relation to traveling behind another driver in VTL § 1120, Following too closely. Section 1120 of the VTL states the following;

(a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(b) The driver of any motor truck or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another motor truck or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a motor truck or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle.

(c) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to funeral processions.

6. Accordingly, based on the deposition transcripts of the Plaintiff NEIL WOODS, Defendant GLORIA HANNA and Defendant ANGELA BAKER, Defendant GLORIA HANNA has proffered a prima facie showing of negligence on the part of the plaintiff. Plaintiff NEIL WOODS rear ended defendant GLORIA HANNA while her vehicle was stopped. Not only did Defendant GLORIA HANNA testify that her **vehicle was stopped when it was rear-ended** by the plaintiff, but the **plaintiff confirmed this account of the accident** his deposition transcript (See **Exhibit C** page 35-36 and **Exhibit D** page 24-25). In addition, Defendant ANGELA BAKER confirmed this account of the accident. Accordingly, a reading on the relevant portions of these deposition transcripts establishes Defendant GLORIA HANNA'S entitlement to summary judgment as she is not liable for the accident.

## II.

### ARGUMENT

#### **PLAINTIFF IS UNABLE TO ESTABLISH A TRIABLE ISSUE OF FACT THAT DEFENDANT GLORIA HANNA WAS NEGLIGENT AND THAT HER NEGLIGENCE WAS THE PROXIMATE CAUSE OF THE ACCIDENT**

7. Additionally, in actions in which the plaintiff is the operator of the moving vehicle involved in a rear-end collision, not only must the plaintiff provide a non-negligent reason for the accident, but he must also raise a triable issue of fact as to whether the stopped vehicle was negligent and whether this negligence was the proximate cause of the accident. Hanak v. Jani, 265 A.D.2d 453, 696 N.Y.S.2d 237, (2<sup>nd</sup> Dept. 1999); Young v. City of New York, 113 A.D.2d 833, 493 N.Y.S.2d 585 (2<sup>nd</sup> Dept. 1985); Mascitti, 250 A.D.2d 821, 822 (2<sup>nd</sup> Dept, 1998).

8. The Appellate Division in Hanak, reversed the trial court's ruling and granted the defendants Summary Judgment. Hanak, 265 A.D.2d 453, 454. The Hanak Court held that although the plaintiff had established a non-negligent reason for rear-ending the defendant's motor vehicle, he failed to raise a triable issue of fact as to whether the defendant was negligent and whether this negligence was the proximate cause of the accident. Id., at 454.

9. Similar to Hanak, the plaintiff in this current action is unable to raise a triable issue of fact as to whether the defendant GLORIA HANNA was negligent in the operation of her motor vehicle and whether her negligence was the proximate cause of the accident. Defendant

GLORIA HANNA stopped her vehicle because the vehicle in front of her (GOODYEAR) stopped his vehicle. Accordingly, Summary Judgment is appropriate.

10. The defendant GLORIA HANNA testified that she her vehicle was stopped when it was rear-ended by the plaintiff. The Plaintiff's testimony does not raise a triable issue of fact as to how the accident occurred, instead it confirms defendant GLORIA HANNA's account of the accident. Defendant ANGELA BAKER also confirms that plaintiff NEIL WOODS rear-ended GLORIA HANNA'S vehicle. Accordingly, Defendant GLORIA HANNA should be entitled to summary judgment on liability and all claims and cross-claims should be dismissed against her.

### **CONCLUSION**

:

Based upon the above case law and the supporting affirmation, along with its attached exhibits, of the plaintiff and Defendant GLORIA HANNA, it is clear that the Defendants GLORIA HANNA and LEROY ANDREW, SR. have established a prima facie showing of entitlement to Summary Judgment. The burden has now shifted to the plaintiff to raise a triable issue of fact as to whether the Defendant GLORIA HANNA was negligent and whether that negligence was the proximate cause of the accident. It is respectfully submitted that the Plaintiff will be unable to do so, accordingly, the Plaintiff's complaint should be dismissed as well as all cross-claims against the defendants GLORIA HANNA and LEROY ANDREW SR.

WHEREFORE, it is respectfully requested that the Court grant summary judgment to the Defendants, GLORIA HANNA and LEROY ANDREW, SR. dismiss the Plaintiff's Complaint and all cross-claims in their entirety and with prejudice, and grant such other and further relief that this Court deems just and proper.


**Attorney's Certification**

*The undersigned hereby certifies that, to the best of the undersigned's knowledge, information and belief, formed after a reasonable inquiry under the circumstances, the presentation of the within Statement of Facts in Support of Summary Judgment or the contentions contained herein are not frivolous as defined in FRP Rule 11 (b).*

Dated: New York, New York  
March 20, 2006

Yours, etc.

:

  
Signed by STEVEN MARTIN  
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